No. 73-101

IN THE

Supreme Court of The United States

OCTOBER TERM 1973

EARL CHRISTOPHER HUNTER

Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR REHEARING ON DENIAL OF PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI AND TO VACATE JUDGMENT

Earl Christopher Hunter respectfully petitions that this court grant him a rehearing on its denial of his petition for a writ of certiorari which was timely filed in this Honorable Court, but denied on October 9, 1973.

This request is made pursuant to Rules 58 and 39 of this Honorable Court.

The basis on which this petition is filed are intervening circumstances of substantial or controlling effect and on other substantial grounds available to petitioner which were not presented to this Honorable Court in the original application for a writ of certiorari.

To petitioner's knowledge, presently pending in this court is an application for certiorari, being *Becker v. United States*, (1972) 461 F.2d 230, Supreme Court Case No. _____. This case has pended in this Honorable Court for a considerable period of time and is based upon the constitutionality of the Act which petitioner raised in his original petition for a writ of certiorari.

In addition, intervening circumstances which have occurred are the granting of use-immunity testimony by Congressional bodies which will surely be used in criminal prosecutions, and it is petitioner's belief that in a decision to grant his petition for writ of certiorari the court will be answering some of the questions that it will undoubtedly later be called upon to answer. In the event that petitioner is denied his right of an opinion on these issues which will surely come to the court in later cases as to the use-immunity for Congressional subcommittees in criminal prosecutions, he will be placed in the unhappy position of being convicted potentially in a case where the evidence used against him was in violation of his Constitutional rights, but which decision will not be retroactive as concerning his particular case.

As this Honorable Court well knows, for a number of years the criminal sanctions of the wagering tax laws were held to be Constitutional until the decisions of *Marchetti v. United States*, 390 U.S. 39, 88 S. Ct. 697, and *Grosso v. United States*, 390 U.S. 62, 88 S. Ct. 709.

In matters not previously presented to this Honorable Court in the original application for writ of certiorari

by the petitioner, petitioner did not raise the issue of the violation of his rights under the Fifth Amendment to the Constitution of the United States by the trial court's refusing to fully instruct the trail jury by the denial of a tendered instruction by the petitioner. This issue was raised upon a motion for rehearing in the Seventh Circuit Court of Appeals, which rehearing was, as shown in petitioner's original petition for writ of certiorari to this Honorable Court, overruled.

It is the petitioner's contention and the subject of this petition that the denial of an instruction by him to the effect that if the trial jury found that multiple businesses were operating in count II of the indictment they would be justified in finding the defendant not guilty in Count II of the indictment was violative of petitioner's Constitutional rights.

It is a well established rule of law that the trial court must fully instruct a trial jury. *United States v. Levy,* 153 F.2d 996. In denying the petitioner's instruction the court violated petitioner's rights under the Fifth Amendment to the Constitution of the United States of America.

The Seventh Circuit Court of Appeals noted that petitioner's argument, as well as other arguments, were not frivolous, in its opinion which is now published *United States v. Hunter,* 478 F.2d 1019. The trial court record in this cause shows that the trial court gave no such instruction on the count in the indictment upon which petitioner was convicted, contrary to this court's ruling in *Kotteakos v. United States* (1946) 328 U.S. 750, 66 S.Ct.

1239, and *Blumenthal v. United States* (1947) 332 U.S. 539, 69 S.Ct. 248.

For the above reasons it is respectfully submitted that this petition for rehearing should be granted as to the issuance of a writ of certiorari in petitioner's cause.

Respectfully submitted,

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Indianapolis, Indiana 46204
317-636-5561

Attorney for Petitioner

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

James W. Bradford, being first duly sworn, upon his oath swears that he is the attorney for the petitioner, Earl Christopher Hunter, and that this petition for rehearing has been read carefully, as well as the materials referred to therein, and other materials, and that this petition is, in counsel's opinion and representation presented in good faith and not for delay.

/s/ JAMES W. BRADFORD
James W. Bradford

Subscribed and sworn to before me, a Notary Public in and for said county and state, this 31 day of October, 1973.

/s/ MARILYN F. FREEMAN
Notary Public

My commission expires:
July 1, 1976

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing petition for a writ of certiorari to the United States of Appeals for the Seventh Circuit and motion to vacate judgment upon counsel as follows:

The Honorable Stanley Miller
United States District Attorney
Federal Building
Indianapolis, Indiana 46204

Solicitor General of the United States
Department of Justice
Washington, D.C. 20530
Department of Justice

this 31 day of October, 1973, by mailing a copy thereof by first class United States mail.

/s/ JAMES W. BRADFORD

James W. Bradford